



207 Waiver

Title

Legal Description / Ads

Policy or Appeals

Correspondence Between Legal & Staff

Letter of Authorization

**WHEN RECORDED RETURN TO:**

CITY OF SCOTTSDALE  
ONE STOP SHOP/RECORDS

(\_\_\_\_\_)

7447 East Indian School Road, Suite 100  
Scottsdale, AZ 85251

City of Scottsdale Case No.6-ZN-2019

**AGREEMENT FOR THE WAIVER OF CLAIMS  
FOR DIMINUTION IN VALUE OF PROPERTY**

THIS AGREEMENT FOR THE WAIVER OF CLAIMS FOR DIMINUTION IN VALUE OF PROPERTY (the "Agreement") is made in favor of the City of Scottsdale ("City") by Wildcat Ridge LLC ("Owner").

**RECITALS**

A. Owner is the fee title owner of property, Parcel No(s).219-39-010M, 219-39-010N, 219-39-010G, 219-39-010U, 219-39-010V and 219-39-010P located at the southeast corner of N. 136<sup>th</sup> Street and E. Rio Verde Drive (the "Property").

B. Owner acknowledges that he/she has made a request to the City for application of its land use laws for the development of the Property and is under no compulsion, economic or otherwise, to enter into this Agreement.

C. Arizona statute ARS § 12-1134.A provides that a city must pay just compensation to a land owner, in some cases, if the city approves a land use law that reduces the fair market value of the owner's property. This law is sometimes referred to as "Proposition 207" or the "Private Property Rights Protection Act". (ARS 12-1131, et.seq.)

D. The Private Property Rights Protection Act (e.g., A.R.S. § 12-1134.I) authorizes private property owners to enter into agreements with political subdivisions to waive any claim for diminution in value of their property in connection with any action requested by the property owner.

E. City and Owner seek to resolve whether the application of the City's land use laws to the Property constitute a "diminution in value" of the Property or other harm entitling Owner, now or in the future, to seek compensation from the City under the Private Property Rights Protection Act.

**IT IS AGREED AS FOLLOWS:**

Owner hereby makes the following acknowledgements and representations:

1. Owner acknowledges that:

a. The recitals set forth above are true and correct and are incorporated herein by this reference.

b. Owner is aware of the Private Property Rights Protection Act. (ARS 12-1131, et. seq.)

c. Owner has independently determined and believes that the application of the City's land use laws to the Property will not reduce the fair market value of the Property.

d. Owner is aware that, as a condition of receiving approvals under the City's land use laws, the City may impose various requirements upon the Property, such as requirements for right-of-way dedications, time limitations for development, and other zoning ordinance stipulations and conditions.

2. The undersigned Owner agrees as follows:

a. The Owner agrees that the stipulations and conditions set forth in Case No. 6-ZN-2019 shall be included as part of the ordinance that will be considered by the Scottsdale City Council. Owner agrees that compliance with the stipulations and conditions set forth in Case No. 6-ZN-2019 will govern development of the property. Owner further understands and agrees that stipulations and conditions may be added or modified during the public hearing process and that those stipulations and conditions will be incorporated into this Agreement.

b. Owner hereby waives and fully releases any and all financial loss, injury, claims and causes of action that Owner may have, now or in the future, for any "diminution in value" and for any "just compensation" under the Private Property Rights Protection Act based on the Owner's request in Case No. 6-ZN-2019. This waiver constitutes a complete release of any and all claims and causes of action under the Private Property Rights Protection Act that may arise out of the Owner's request in Case No. 6-ZN-2019.

c. Owner hereby agrees to indemnify, hold harmless and defend City, its officers, employees and agents, from any and all claims, causes of actions, demands, losses and expenses, including reasonable attorney's fees and litigation costs asserted by or resulting from any of the present owners of any interest in the Property seeking any potential compensation, damages, attorney's fees or costs under the Private Property Rights Protection Act that they may have based on the Owner's request in Case No. 6-ZN-2019.

d. This Waiver Agreement shall run with the land and shall be binding upon all present and future owners of any interest in the Property. Owner consents to the recording of this Agreement with the County Recorder in which the Property is located.

e. The Owner agrees that, as of the effective date of this Agreement, he/she has received equal protection of the laws and due process of all claims and requests, and has not suffered any compensable regulatory taking (as those terms and their related claims are defined by Arizona state and federal constitutional jurisprudence).

3. Owner warrants and represents that Owner is the owner of the fee title to the Property.

4. The person who signs this Agreement on behalf of Owner personally warrants and guarantees to City that he has legal power to bind Owner to this Agreement.

Owner: Will Counts Its: Manager

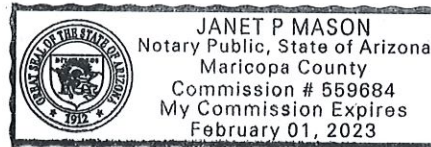
STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

Subscribed, sworn to and acknowledged before me  
by Will Counts on this 20<sup>th</sup> day of December, 2019.

My commission expires:

2/1/23

Janet P. Mason  
Notary Public



**WHEN RECORDED RETURN TO:**

City of Scottsdale  
Martha West, Real Estate Asset Mgr.  
7447 East Indian School Road  
Scottsdale, AZ 85251

Contract No. 2020-015-COS  
Resolution No. 11691

**TERMINATION AND RELEASE OF SETTLEMENT AND DEVELOPMENT AGREEMENT**

This Termination and Release of Settlement and Development Agreement created for the parcels described in **Exhibit 1** hereto ("Property"), City Contract No. 2004-033-COS is declared this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Wildcat Ridge LLC, successor in interest to Scottsdale 275 LLC, an Arizona limited liability company ("Developer"), and the City of Scottsdale, an Arizona municipal corporation ("City"). The City and the Developer may be referred to individually as a "Party" and collectively, the "Parties."

A. WHEREAS, the Developer and the City seek to terminate and release all the recorded documents pertaining to the Settlement and Development Agreement 2004-033-COS, recorded April 26, 2004 at MCR 2004-0442075. This action is needed in order to formally recognize that the Settlement and Development Agreement cannot be relied upon to govern the development of the Property because the lawsuit leading to the Settlement and Development Agreement has been dismissed with prejudice, and Developer has made a new rezoning application to the City for the Property, Case No. 6-ZN-2019.

B. WHEREAS, the Developer and the City now seek to terminate the Settlement and Development Agreement set forth in Recital A;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the parties agree as follows:

1. Termination. Developer and City hereby declare on their behalf and on behalf of their successors and assigns that to the extent of each of their respective right, title and interest therein, the Settlement and Development Agreement referenced above in Recital A is hereby terminated and cancelled and shall be deemed and held to be of no further force and effect.

2. Binding Effect. The provisions hereof are binding upon the Developer, the City and their successors and assigns.

3. Authority. Each Party to this Termination and Release of Settlement and Development Agreement represents to the other that it has full power and authority to execute

this document and that the individual executing this document on behalf of the Party is authorized and empowered to bind the Party that for which the person is signing.

4. Governing Law. This Termination and Release of Settlement and Development Agreement shall be construed in accordance with, and governed by, the laws of the State of Arizona without regard to conflicts of laws.

5. Further Assurances. The Parties hereto or any other party holding an interest herein, for themselves, their successors and assigns, agree to do and take such further and additional acts and actions and execute, acknowledge and deliver such further and additional documents, instruments and writings as may be necessary or required (with no material time or expense to Developer) to fully effectuate the provisions and intent of this Termination and Release of Settlement and Development Agreement.

6. Recordation. The City shall record this Termination and Release of Settlement and Development Agreement with the office of the Maricopa County Recorder within 10 days of its execution by the City.

7. Counterparts. This Termination and Release of Settlement and Development Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

8. No Third Party Beneficiaries. No provision of this Termination and Release of Settlement and Development Agreement is intended to benefit any third person or entity except successors in interest to which the Development Agreement otherwise would have applied, and no such person or entity has any right or cause of action hereunder.

IN WITNESS WHEREOF, the undersigned have executed this Termination and Release of Settlement and Development Agreement.

WILDCAT RIDGE L.L.C.

By: Will Counts  
Name: WILL COUNTS, MANAGER  
Its: Authorized Signer

STATE OF ARIZONA            )  
  ) ss  
COUNTY OF Maricopa    )

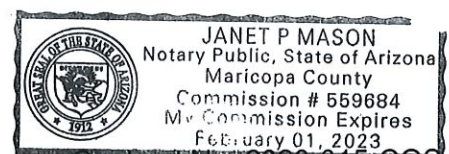
The foregoing Termination and Release of Settlement and Development Agreement and was acknowledged before me this 20th day of December, 2019, by Will Counts the Authorized Signer of Wildcat Ridge L.L.C., an Arizona limited liability company.

Janet P. Mason  
Notary Public

My Commission Expires:

02/01/23

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Contract No. 2020-015-COS

17860293v1

**CITY OF SCOTTSDALE**, an Arizona municipal corporation

ATTEST:

By: \_\_\_\_\_  
W. J. "Jim" Lane, Mayor

By: \_\_\_\_\_  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

\_\_\_\_\_  
Sherry R. Scott, City Attorney  
By: Margaret Wilson, Senior City Attorney

STATE OF ARIZONA            )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Termination and Release of Development Agreements and Declarations of Restrictions and Related Documents was sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by W. J. "Jim" Lane, the Mayor of the City of Scottsdale.

My Commission Expires: \_\_\_\_\_ Notary Public